

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN LUTHER KING, JR.
COUNTY, et al.,

Plaintiffs,

vs.

SCOTT TURNER in his official capacity
as Secretary of the U.S. Department of
Housing and Urban Development, et al.,

Defendants.

No. 2:25-cv-00814-BJR

ORDER GRANTING PLAINTIFFS'
THIRD MOTION FOR
PRELIMINARY INJUNCTION

[PROPOSED]

This matter came before the Court on Plaintiffs' Third Motion for Preliminary Injunction (the "Motion"). Having considered the briefs and declarations submitted in support of and in opposition to the Motion and the other pleadings and papers filed in this action, the Court makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

A. The HUD Grant Conditions

1. The "HUD Plaintiffs"¹ have received, currently receive, or are otherwise eligible

¹ The "HUD Plaintiffs" are Martin Luther King, Jr. County ("King County"), Pierce County, Snohomish County, City and County of San Francisco ("San Francisco"), County of Santa Clara ("Santa Clara"), City of Boston ("Boston"), City of Bend ("Bend"), City of Columbus ("Columbus"), City of New York ("NYC"), City of Cambridge ("Cambridge"), City of Chicago ("Chicago"), City of Culver City ("Culver City"), King County Regional Homelessness Authority ("KCRHA"), City of Minneapolis ("Minneapolis"), Metropolitan Government of

ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 1

1 to receive federal grants administered by Defendant U.S. Department of Housing and Urban
 2 Development (HUD), including but not limited to grants administered by HUD through its
 3 program offices. Collectively, HUD Plaintiffs rely on over \$2.5 billion in appropriated federal
 4 funds from HUD grant programs, which fund homelessness assistance, affordable housing,
 5 community development programs, and other services that benefit their communities.
 6

7 2. A number of HUD Plaintiffs rely on federal funding from the Continuum of Care
 8 (CoC) program established by Congress to provide critical services to individuals and families
 9 experiencing homelessness, including but not limited to rapid rehousing, permanent supportive
 10 housing, and other services. Of these, several Plaintiffs obtained relief from the challenged grant
 11 conditions as to the CoC program in this Court's order granting Plaintiffs' prior preliminary
 12 injunction (PI) motions (the "Initial CoC Plaintiffs"),² Dkt. # 169, while others are not covered by
 13 that order (the "New CoC Plaintiffs," and, together with the Initial CoC Plaintiffs, the "CoC
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18 Nashville & Davidson County ("Nashville"), City of Pasadena ("Pasadena"), Pima County, City
 19 of Pittsburgh ("Pittsburgh"), City of Portland ("Portland"), City of San José ("San José"), City of
 20 Santa Monica ("Santa Monica"), Santa Monica Housing Authority ("Santa Monica HA"), City of
 21 Tucson ("Tucson"), County of Alameda ("Alameda County"), City of Albuquerque
 22 ("Albuquerque"), Mayor and City Council of Baltimore ("Baltimore"), City of Bellevue
 23 ("Bellevue"), City of Bellingham ("Bellingham"), City of Bremerton ("Bremerton"), County of
 24 Dane ("Dane County"), City of Eugene ("Eugene"), County of Hennepin ("Hennepin County"),
 25 Kitsap County, City of Los Angeles ("Los Angeles"), City of Milwaukee ("Milwaukee"),
 26 Multnomah County, City of Oakland ("Oakland"), City of Petaluma ("Petaluma"), Ramsey
 27 County, City of Rochester ("Rochester"), County of San Mateo ("San Mateo County"), City of
 San Diego ("San Diego"), County of San Mateo ("San Mateo County"), City of Santa Rosa
 ("Santa Rosa"), County of Sonoma ("Sonoma County"), City of Watsonville ("Watsonville"),
 Culver City Housing Authority ("CCHA"), and Sonoma County Community Development
 Corporation ("SCCDC").

² The "Initial CoC Plaintiffs" are King County, Pierce County, Snohomish County, San
 Francisco, Santa Clara, Boston, NYC, Cambridge, KCRHA, Nashville, Pasadena, Pima County,
 San José, Santa Monica HA, and Tucson.

ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
 PRELIMINARY INJUNCTION - 2

No. 2:25-cv-00814-BJR

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1 Plaintiffs”).³

2 3. All HUD Plaintiffs also rely on a range of other competitive and formula grant
3 programs administered by HUD, including but not limited to the Community Development Block
4 Grant (CDBG) program, which provides flexible funding for development projects tailored to local
5 needs; the Emergency Solutions Grant (ESG) program, which funds emergency shelters and
6 homelessness services; the Home Investment Partnerships (HOME) program, which supports
7 development of affordable housing; and the Housing Opportunities for Persons with AIDS
8 (HOPWA) program, which funds housing for individuals with HIV/AIDS.

9
10 *a.) The CoC Grant Conditions*

11 4. In July 2024, HUD posted a biennial Notice of Funding Opportunity (NOFO),
12 inviting applications from local coalitions, known as “Continuums,” for CoC funding. None of the
13 conditions challenged here were included in the NOFO. Rather, the NOFO specified that “HUD
14 is emphasizing system and program changes to address racial equity within CoCs and projects”
15 and instructed applicants that “[r]esponses to preventing and ending homelessness should address
16 racial inequities.” The NOFO further specified that each “CoC should address the needs of
17 LGBTQ+, transgender, gender non-conforming, and non-binary individuals and families in their
18 planning processes,” and “when considering which projects to select in their local competition to
19 be included in their application to HUD, CoCs should ensure that all projects provide privacy,
20 respect, safety, and access regardless of gender identity or sexual orientation.”

21 5. After reviewing applications, HUD conditionally awarded the New CoC Plaintiffs
22 and their Continuums nearly two hundred million dollars in CoC grants in Fiscal Year 2024. New
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26 ³ The “New CoC Plaintiffs” are Alameda County, Albuquerque, Baltimore, Columbus, Dane
27 County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey
County, San Mateo County, and Sonoma County.

1 CoC Plaintiffs rely on CoC funding, which is typically awarded annually in relatively stable
2 amounts, to provide essential services to their most vulnerable residents, including but not limited
3 to rapid rehousing for those who become suddenly homeless, temporary and permanent supportive
4 housing, rental assistance, mental health services, case management, and more.

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6 6. HUD regulations permit HUD to require CoC recipients to comply with additional
7 “terms and conditions,” but such terms and conditions must be “establish[ed] by NOFA,” which
8 is a term interchangeable with NOFO.

9 7. Beginning in March 2025, HUD began presenting New CoC Plaintiffs with CoC
10 grant agreements (“CoC Agreements”) containing grant conditions (“CoC Grant Conditions”) that
11 were not included in the NOFO or authorized by any statute or regulation and that are identical to
12 the conditions this Court enjoined as to the Initial CoC Plaintiffs, specifically:

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14 a. The CoC Agreements state that “[t]his Agreement, the Recipient’s use of
15 funds provided under this Agreement . . . , and the Recipient’s operation of projects
16 assisted with Grant Funds” are “governed by” not only certain specified statutes, rules,
17 and grant-related documents, but also by “all current Executive Orders”

18 b. The CoC Agreements require the recipient to certify “it does not operate
19 any programs that violate any applicable Federal anti-discrimination laws, including
20 Title VI of the Civil Rights Act of 1964.” The CoC Agreements also require the
21 recipient to agree that “its compliance in all respects with all applicable Federal anti-
22 discrimination laws is material to the U.S. Government’s payment decisions” for
23 purposes of the False Claims Act (FCA), 31 U.S.C. §§ 3729 et seq.

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25 President Donald J. Trump, HUD, and other agencies have confirmed their
26 agenda is to prohibit policies or programs promoting inclusion for people of all races,
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1 ethnicities, national origins, sexes, gender identities, or sexual orientations through the
2 guise of enforcing federal nondiscrimination law. For instance, Deputy U.S. Attorney
3 General Todd Blanche recently announced a new initiative to use the FCA against
4 federal-funding recipients that engage in purportedly “unlawful discrimination” via
5 DEI policies, which he asserts, without citation to supporting authority, includes
6 permitting transgender individuals to use bathrooms or participate in athletics
7 consistent with their gender identities. Dkt. # 65 at 5. U.S. Attorney General Pam
8 Bondi’s recent memorandum—which states, among other claims, that facially neutral
9 practices selected to increase racial diversity are unlawful if “they correlate with,
10 replicate, or are used as substitutes for protected characteristics”—further demonstrates
11 the Trump administration’s reinterpretation of nondiscrimination law, which
12 Defendants intend to enforce against recipients of federal funds. Dkt. # 331. HUD
13 Secretary Scott Turner has announced that his agency “is carrying out President
14 Trump’s executive orders, mission, and agenda,” by “[a]lign[ing] all . . . grant
15 agreements with the President’s Executive Orders, removing diversity, equity,
16 inclusion (DEI).” Press Release, HUD, *HUD Delivers Mission-Minded Results in*
17 *Trump Administration’s First 100 Days* (Mar. 11, 2025),
18 <https://www.hud.gov/news/hud-no-25-059>. He also posted on X (formerly Twitter),
19 alongside a screenshot of a version of the CoC Discrimination Condition, stating that
20 “CoC funds . . . will not promote DEI.” Scott Turner (@SecretaryTurner), X (Mar. 13,
21 2025, 11:47 AM), <https://x.com/SecretaryTurner/status/1900257331184570703>.
22 Finally, as discussed further below, HUD recently amended its Applicant and Recipient
23 Assurances and Certifications (the “HUD Certifications”), which applicants must
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1 submit to apply for HUD funding, adding a new requirement that applicants must
2 certify they do not operate DEI programs that purportedly “violate any applicable
3 Federal antidiscrimination laws.” These announcements and updated certification
4 requirements reflect the administration’s agenda to pressure recipients to eliminate
5 lawful DEI policies using the threat of FCA enforcement based on a legally
6 unsupported reinterpretation of nondiscrimination law. *See also* Dkt. # 6 at 346 (letter
7 from DOT Secretary Sean Duffy warning that DOT considers “discriminatory policies
8 or practices designed to achieve so-called ‘diversity, equity, and inclusion’ . . . goals”
9 to “presumptively violate[] Federal law,” even when “described in neutral terms”).

11 c. Next, the CoC Agreements provide that “[n]o state or unit of general local
12 government that receives funding under this grant may use that funding in a manner
13 that by design or effect facilitates the subsidization or promotion of illegal immigration
14 or abets policies that seek to shield illegal aliens from deportation.”

16 d. The CoC Agreements further require the recipient to comply with
17 “applicable requirements that HUD, the Attorney General, or the U.S. Center for
18 Immigration Services [sic] may establish from time to time to comply with PRWORA,
19 Executive Order 14218, other Executive Orders or immigration laws.”

21 e. The CoC Agreements also provide:

22 Subject to the exceptions provided by PRWORA, the recipient must
23 use [the Systematic Alien Verification for Entitlements (SAVE)
24 system], or an equivalent verification system approved by the
25 Federal government, to prevent any Federal public benefit from
being provided to an ineligible alien who entered the United States
illegally or is otherwise unlawfully present in the United States.

26 f. The CoC Agreements require the recipient to agree it “shall not use grant
27 funds to promote ‘gender ideology,’ as defined in [Executive Order] 14168.”

g. The CoC Agreements prohibit the recipient from using grant funds “to fund or promote elective abortions, as required by [Executive Order] 14182, Enforcing the Hyde Amendment.”

8. The CoC Grant Conditions are in tension with, if not violative of, HUD’s own regulations. For example, HUD regulations mandate “equal access” to CoC “programs, shelters, other buildings and facilities, benefits, services, and accommodations . . . in accordance with [each] individual’s gender identity, and in a manner that affords equal access to the individual’s family,” including facilities with “shared sleeping quarters or shared bathing facilities.” 24 C.F.R. § 5.106(b)–(c). HUD regulations also prohibit subjecting an individual “to intrusive questioning or” asking individuals “to provide anatomical information or documentary, physical, or medical evidence of the individual’s gender identity.” *Id.* § 5.106(b)(3). HUD’s Secretary, Defendant Scott Turner, has said HUD will no longer enforce these regulations, but they remaining in effect and applicable to the CoC program.

9. On May 7, 2025, this Court entered a TRO enjoining Defendants HUD and Scott Turner from, among other things, imposing or enforcing the CoC Grant Conditions, rescinding or canceling the CoC Agreements or withholding funds based on such conditions, or requiring any “certification” or representation related to the those conditions with respect to the original group of CoC Plaintiffs.⁴ Dkt. ## 51, 52. On May 21, 2025, this Court extended the TRO for 14 days. Dkt. # 73. On May 21, 2025, Plaintiffs filed their First Amended Complaint, naming additional Plaintiffs affected by the CoC conditions. The Court entered a second TRO on May 23, 2025, extending the relief granted in the first TRO to Plaintiffs Cambridge and Pasadena and their

⁴ Plaintiffs King County, Pierce County, Snohomish County, San Francisco, Santa Clara, Boston, and NYC joined the First Motion for TRO as to the CoC Conditions. Dkt. # 5.

Continuums as to the CoC Grant Conditions. Dkt. # 152.

10. On June 3, 2025, this Court entered a PI enjoining HUD and its officers and agents from taking any of the actions barred by the earlier TROs or taking certain other actions implementing the CoC conditions with respect to the Initial CoC Plaintiffs. Dkt. # 169.

11. Plaintiffs filed their Second Amended Complaint on July 10, 2025, which, among other things, added New CoC Plaintiffs. Plaintiffs then filed this Motion seeking, among other things, to extent the preliminary relief granted in the first PI Order as to the CoC Grant Conditions to the New CoC Plaintiffs. The Initial CoC Plaintiffs and New CoC Plaintiffs assert the same claims and allege materially similar harms with respect to the CoC Grant Conditions.

12. For similar reasons to those stated in the first PI order, the New CoC Plaintiffs face immediate and irreparable harms during the pendency of this litigation absent a PI. The New HUD Plaintiffs have an immediate need to receive CoC funds to sustain ongoing programs and services and are faced with the choice of losing these funds or accepting conditions that are likely unlawful. The HUD Plaintiffs have begun budgeting and planning for upcoming expenditures; households reliant on private rentals are at risk of eviction if there is even a short-term interruption of rent payments covered by CoC funds; and the interruption of funds could threaten the operation of supportive housing. Ultimately, any delay or loss of funding would result in disruption of services and cause irreparable damage to individuals' lives. For example:

a. The loss of CoC funding would likely lead to the eviction and homelessness of hundreds of individuals living in permanent supportive housing or reenrolled in rapid rehousing programs in Sonoma County while eliminating services that allow them to live safely in the community.

b. Similarly, withholding CoC funds from Ramsey County would risk the loss

1 of access to housing and supportive services to individuals experiencing homelessness,
 2 increasing their potential exposure to Minnesota's dangerously cold winter weather.

3 c. Losing CoC funding would not only result in the loss of critical services for
 4 Multnomah County's homeless residents, including mental health services, case
 5 management, food, and child care services, it would also put at risk 100 full time
 6 positions at nonprofit services providers that are exclusively funded with CoC grants.
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8 d. Without CoC funds, Dane County has no source of funding to support 123
 9 households enrolled in rental assistance programs. Without this assistance, these
 10 households would be unlikely to afford housing, leading to likely eviction and return
 11 to homelessness.

12 ***b.) The Non-CoC HUD Grant Conditions***

13 13. Since the Court entered the PI order, it has become clear that HUD intends to
 14 impose conditions materially identical to the CoC Grant Conditions on all grant programs HUD
 15 administers, and at multiple stages of the grant-making process. HUD Plaintiffs rely on these
 16 grants to fund essential services, including homeless shelters, affordable housing, community
 17 development projects, and more. Some HUD Plaintiffs coordinate their administration of certain
 18 HUD grants as members of a "consortium," i.e., "[a]n organization of geographically contiguous
 19 units of general local government that are acting as a single unit of general local government for
 20 purposes" of certain HUD programs. 24 C.F.R. § 91.5.
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22 14. In May 2025, HUD amended the HUD Certifications to add a new certification that
 23 requires applicants to certify that they:
 24

25 Will not use Federal funding to promote diversity, equity, and
 26 inclusion (DEI) mandates, policies, programs, or activities that
 27 violate any applicable Federal antidiscrimination laws.

1 (the “HUD DEI Certification”). Jurisdictions must submit the HUD Certifications to apply for
2 HUD funding, including when they submit certain consolidated plans and/or action plans
3 annually as a condition to receiving CDBG, ESG, HOME, and HOPWA formula funding.

4 15. On June 5, 2025, HUD announced additional conditions applicable to all formula
5 grants administered by HUD’s Office of Community Planning and Development (CPD), including
6 but not limited to the CDBG, ESG, HOME, and HOPWA programs. In particular, a letter by
7 Claudette Fernandez, HUD’s General Deputy Assistant Secretary for CPD, lists the following
8 conditions that will apply “[u]nder the FY 2025 grant agreement[s]” (collectively, and together
9 with the HUD DEI Certification, the “Non-CoC HUD Grant Conditions”):
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11 a. First, recipients must agree that they “shall not use grant funds to
12 promote ‘gender ideology,’ as defined in Executive Order (E.O.) 14168, Defending
13 Women from Gender Ideology Extremism and Restoring Biological Truth to the
14 Federal Government” (the “CPD Gender Ideology Condition”).
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16 b. Second, each recipient must “agree[] that its compliance in all respects with
17 all applicable Federal anti-discrimination laws is material to the U.S. Government’s
18 payment decisions for purposes of [the FCA]” and “certif[y] that it does not operate
19 any programs that violate any applicable Federal antidiscrimination laws, including
20 Title VI of the Civil Rights Act of 1964” (together, the “CPD Discrimination
21 Condition”). President Trump, HUD, and other agencies have confirmed their agenda
22 is to prohibit policies or programs promoting inclusion for people of all races,
23 ethnicities, national origins, sexes, gender identities, or sexual orientations through the
24 guise of enforcing federal nondiscrimination law. Under that agenda the operation of
25 any DEI program would run afoul of the certification.
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c. Third, each recipient must agree that it “shall not use any grant funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment” (the “CPD Abortion Condition”).

d. Fourth, recipients must agree that:

The Grantee must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under [PRWORA] and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws.

....

Unless excepted by PRWORA, the Grantee must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.

(together, the “CPD Verification Condition”).

e. Fifth, the recipient must agree that:

If applicable, no state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation.

(the “CPD Enforcement Condition”).

16. Further demonstrating the agency’s intent to apply the Non-CoC HUD Conditions to all HUD grant programs, in April 2025, HUD updated its General Administrative, National, and Departmental Policy Requirements and Terms for HUD’s Financial Assistance Programs (the “HUD Policy Terms”) to list President Trump’s executive orders among the “laws and policies that may apply” to HUD grants and to list requirements materially similar or identical to certain

1 Non-CoC HUD Grant Conditions.

2 17. The Non-CoC HUD Grant Conditions are in tension with, if not violative of,
3 congressional guidance and directives governing HUD grant programs. For instance, the HOME
4 Investment Partnerships Act, Pub. L. No. 101-625, tit. II, 104 Stat. 4079, 4094, which established
5 the HOME program requires participating jurisdictions “to establish and oversee a minority
6 outreach program . . . to ensure the inclusion, to the maximum extent possible, of minorities and
7 women, and entities owned by minorities and women . . . in all contracts[] entered into by the
8 participating jurisdiction . . . to provide affordable housing authorized under this Act.” 42 U.S.C.
9 § 12831(a). In addition, the Housing and Community Development Act of 1974, Pub. L. 93-383,
10 88 Stat. 633, which established the CDBG program, requires the HUD Secretary to set aside some
11 of the funds appropriated for the CDBG program for “special purpose grants,” which may include,
12 among other things, grants to “historically Black colleges.” 42 U.S.C. § 5307(b)(2). Of the
13 amounts set aside for special purpose grants, the Secretary “shall” make grants to institutions of
14 higher education “for the purpose of providing assistance to economically disadvantaged and
15 minority students who participate in community development work study programs and are
16 enrolled in” qualifying degree programs. *Id.* § 5307(c). Finally, of the Cranston-Gonzalez National
17 Affordable Housing Act, Pub. L. No. 101-625, 104 Stat. 4079, which established the HOME and
18 HOPWA programs, indicates congressional intent to benefit historically disadvantaged groups,
19 including the aim to “improve housing opportunities for . . . members of disadvantaged
20 minorities.” 42 U.S.C. § 12702(3).

21 18. HUD Plaintiffs face immediate and irreparable harms from imposition of the Non-
22 CoC HUD Grant Conditions during the pendency of this litigation absent a PI. Many HUD
23 Plaintiffs face a deadline of Saturday, August 16, 2025, to submit consolidated and action plans to
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1 HUD, which would subject them to the Non-CoC HUD Grant Conditions, or else forfeit formula
2 grant funding needed to support essential services. And HUD has recently informed King County
3 that its consolidated/action plan was being disapproved based on its use of words like “equity” and
4 “migrant” that HUD deemed to violate requirements set forth in executive orders. HUD directed
5 King County to remove these words from its plans and include “assurance statements” that mirror
6 the Non-CoC HUD Grant Conditions. Other Plaintiffs, including Petaluma and Bellevue have
7 received similar notifications.
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9 19. HUD Plaintiffs are already grappling with the uncertainty over federal funding by,
10 for example, pausing affordable housing development and preservation. Loss of these funds would
11 disrupt the lives of HUD Plaintiffs’ most vulnerable residents, likely leading to evictions and
12 increased homelessness and further straining local resources. Even a temporary loss of funding
13 would set back efforts to create and preserve affordable housing, ameliorate homelessness, and
14 house low-income individuals living with HIV/AIDS. For example:
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16 a. Loss of CDBG, HOME, and ESG funding would eliminate housing
17 opportunities for between 200 and 500 low income and homeless residents in San
18 Mateo County who rely on housing and shelter programs funding by these grants.

19 b. Withholding HUD funding would place approximately 1,500 households in
20 Santa Monica that are currently housed through HOME and other HUD-funded
21 programs at immediate risk of homelessness.
22

23 c. Pierce County has had to pause a project to develop and preserve affordable
24 housing due to uncertainty over the Non-CoC HUD Grant Conditions.

25 d. Loss of funding would eliminate Bellingham’s Home Rehabilitation
26 Program, which allows elderly and disabled residents the dignity of living safely in
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1 their own homes, and would severely undermine the viability of Bellingham’s food
2 bank, on which nearly 20% of the surrounding county’s residents rely.

3 **B. The DOT Grant Conditions**

4 20. Many Plaintiffs rely, collectively, on billions of dollars in appropriated funds
5 through grant programs administered by the U.S. Department of Transportation (DOT) and its
6 operating administrations, which include but are not limited to the Federal Highway
7 Administration (FHWA), Federal Aviation Administration (FAA), Federal Railroad
8 Administration (FRA), and Federal Transit Administration (FTA) (collectively, the “DOT OAs,”
9 and together with Defendants DOT, Sean Duffy, Tariq Bokhari, Gloria M. Shepherd, Chris
10 Rocheleau, and Drew Feeley, the “DOT Defendants”).

12 21. The “Initial DOT Plaintiffs”⁵ obtained relief from the challenged grant conditions
13 in this Court’s order granting Plaintiffs’ prior preliminary injunction (PI) motions, Dkt. # 169.
14 Others joined this lawsuit subsequently and are not covered by that order (the “New DOT
15 Plaintiffs,” and, together with the Initial DOT Plaintiffs, the “DOT Plaintiffs”).⁶

17 22. On April 24, 2025, DOT Secretary Sean Duffy issued a letter to “all recipients” of
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20 ⁵ The “Initial DOT Plaintiffs” are King County, Bend, Boston, Chicago, Columbus, Culver City,
21 City of Denver (“Denver”), Intercity Transit, Minneapolis, Nashville, NYC, Pierce County, Pima
22 County, Pittsburgh, Port of Seattle (“Seattle”), Portland, San Francisco, San José, Santa Clara,
23 Santa Monica, Snohomish County, Sonoma County, Central Puget Sound Regional Transit
24 Authority (“Sound Transit”), San Francisco County Transportation Authority (“SFCTA”),
25 Treasure Island Mobility Management Agency (“TIMMA”), Tucson, and City of Wilsonville
26 (“Wilsonville”).

27 ⁶ The “New DOT Plaintiffs” are Alameda County, Albuquerque, Baltimore, Bellevue,
Bellingham, Bremerton, Cambridge, Dane County, Eugene, City of Healdsburg (“Healdsburg”),
Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah
County, Oakland, City of Pacifica (“Pacifica”), Pasadena, Petaluma, Puget Sound Regional
Council (“PSRC”), Ramsey County, Rochester, City of Rohnert Park (“Rohnert Park”), San
Diego, San Mateo County, Santa Rosa, Sonoma County Transportation Authority (“SCTA”), and
Watsonville.

1 DOT grant funding announcing, among other things, a DOT “policy” to impose certain conditions
2 on all DOT funding, including but not limited to grants administered by DOT and the DOT OAs.
3 In particular, Secretary Duffy’s letter states that grant recipients’ “legal obligations require
4 cooperation generally with Federal authorities in the enforcement of Federal law, including
5 cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other
6 Federal offices and components of the Department of Homeland Security in the enforcement of
7 Federal immigration law.” It also states that DOT interprets federal anti-discrimination law to
8 presumptively prohibit “any policy, program, or activity that is premised on a prohibited
9 classification, including discriminatory policies or practices designed to achieve so-called
10 ‘diversity, equity, and inclusion’ . . . goals.” Finally, the letter states that “DOT recipients are
11 prohibited from engaging in discriminatory actions in their own policies, programs, and activities.”
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14 23. Pursuant to the policy set forth in Secretary Duffy’s letter, the DOT Defendants
15 began attaching new conditions related to immigration enforcement, executive orders, and
16 diversity, equity, and inclusion (DEI) to DOT-funded grants.

17 24. For instance, several DOT Plaintiffs were previously awarded FTA funds pursuant
18 to programs codified in title 49, chapter 53 of the U.S. Code. These funds were awarded without
19 any of the conditions challenged here.
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21 25. On April 25, 2025, FTA issued a revised Master Agreement, which applies to FTA
22 grants awarded to the DOT Plaintiffs. The new Master Agreement contains the following new
23 conditions (“FTA Grant Conditions”):

24 a. The FTA Master Agreement requires the recipient to “agree[] to comply
25 with all applicable federal requirements and follow applicable federal guidance.” The
26 Master Agreement defines “Federal Requirement” to include “[a]n applicable federal
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1 law, regulation, or executive order.”

2 b. The FTA Master Agreement provides:

3 (1) Pursuant to section (3)(b)(iv)(A) [of Executive Order 14173],
4 the Recipient agrees that its compliance in all respects with all
5 applicable Federal antidiscrimination laws is material to the
6 government’s payment decisions for purposes of [the FCA].

7 (2) Pursuant to section (3)(b)(iv)(B) [of Executive Order 14173], by
8 entering into this Agreement, the Recipient certifies that it does
9 not operate any programs promoting [DEI] initiatives that
10 violate any applicable Federal anti-discrimination laws.

11 While FTA grants have long required compliance with nondiscrimination laws,
12 DOT has confirmed its intent to enforce a sweeping interpretation of these
13 conditions inconsistent with statutory text and current court interpretations of the
14 Federal antidiscrimination laws.

15 c. The FTA Master Agreement also provides:

16 The Recipient . . . will cooperate with Federal officials in the
17 enforcement of Federal law, including cooperating with and not
18 impeding U.S. Immigration and Customs Enforcement (ICE) and
19 other Federal offices and components of the Department of
20 Homeland Security in the enforcement of Federal immigration law.

21 26. This Court’s May 7 TRO enjoined Defendants DOT, FTA, Sean Duffy, and
22 Mathew Welbes from, among other things, imposing or enforcing the FTA Grant Conditions,
23 rescinding or canceling FTA funds or withholding funds based on such conditions, or requiring
24 any “certification” or representation related to those conditions as to King County—the sole
25 Plaintiff to initially seek preliminary relief from the FTA Grant Conditions. This aspect of the TRO
26 served, in part, to prevent immediate and irreparable harms that King County faced from having
27 to choose between accepting likely unlawful conditions or losing hundreds of millions in FTA
funding.

1 27. Since then, DOT and the remaining DOT OAs began attaching substantially similar
2 conditions to numerous other DOT grants. These include, but are not limited to, programs
3 administered by FHWA, such as the Safe Streets and Roads for All (SS4A) program, the Federal
4 Highway-Aid Program, the Bridge Investment Program, the Culvert Aquatic Organism Passage
5 Program, and the Advanced Transportation Technology and Innovation (ATTAIN) program;
6 programs administered by FAA, such as the Airport Infrastructure Grants (AIG) program;
7 programs administered by FRA, such as the Railroad Crossing Elimination (RCE) Grant Program;
8 and programs administered directly by DOT, such as the Strengthening Mobility and
9 Revolutionizing Transportation (SMART) discretionary grant program. Moreover, Defendants
10 Duffy, DOT, and the DOT OAs have made clear that these conditions will now appear in all DOT
11 grants going forward.
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14 28. DOT and the remaining DOT OAs have provided grant agreements governing grant
15 programs that contain substantially the same three conditions as in the FTA Master Agreement
16 (collectively and together with the FTA Grant Conditions, the “DOT Grant Conditions”):

17 a. First, the DOT Defendants have imposed a discrimination condition (“DOT
18 Discrimination Condition”) that requires grant recipients, “[p]ursuant to Section
19 (3)(b)(iv), Executive Order 14173” to agree that “its compliance in all respects with all
20 applicable Federal antidiscrimination laws is material to the government’s payment
21 decisions for purposes of [the False Claims Act],” and that “it does not operate any
22 programs promoting [DEI] initiatives that violate any applicable Federal anti-
23 discrimination laws.”
24

25 b. Second, the DOT Defendants have imposed an immigration enforcement
26 condition (“DOT Immigration Enforcement Condition”) that requires recipients to
27

1 “cooperate with Federal officials in the enforcement of Federal law, including
 2 cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE)
 3 and other Federal offices and components of the Department of Homeland Security in
 4 the enforcement of Federal immigration law,” and a condition requiring recipients to
 5 “follow applicable federal laws pertaining to Subchapter 12 and be subject to the
 6 penalties set forth in 8 U.S.C. § 1324, Bringing in and harboring certain aliens, and 8
 7 U.S.C. § 1327, Aiding or assisting certain aliens to enter.” The Duffy Letter articulates
 8 DOT’s intent to enforce an expansive and novel interpretation of these statutes, thereby
 9 forcing local governments to participate in the Trump administration’s aggressive
 10 immigration enforcement policies. It asserts that “[d]eclining to cooperate with the
 11 enforcement of Federal immigration law or otherwise taking action intended to shield
 12 illegal aliens from ICE detection contravenes Federal law and may give rise to civil
 13 and criminal liability” under “8 U.S.C. § 1324 and 8 U.S.C. § 1373.”

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 16 c. Third, the DOT Defendants have imposed a condition (“DOT EO
 17 Condition”) that requires recipients to “comply with all applicable Federal laws,
 18 regulations, executive orders, policies, guidelines, and requirements as they relate to
 19 the application, acceptance, and use of Federal funds for this [grant]” and lists, among
 20 other things, Executive Orders 14168 (“Defending Women from Gender Ideology
 21 Extremism and Restoring Biological Truth to the Federal Government”) and 14173
 22 (“Ending Illegal Discrimination and Restoring Merit-Based Opportunity”), as well as
 23 two criminal immigration statutes (8 U.S.C. § 1324 and 8 U.S.C. § 1327) as
 24 “provisions” that are “applicable” to grant agreements.
 25

26 29. The DOT Grant Conditions are in tension with, if not violative of, congressional
 27

1 guidance and directives and HUD's own regulations. They also contradict guidance contained in
2 NOFOs issued by DOT announcing competitions for DOT funds.

3 30. For instance, the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat.
4 429, which established the Safe Streets and Roads for All ("SS4A") grant program, requires the
5 DOT Secretary, in awarding grants, to consider, among other things, the extent to which applicants
6 and their proposed projects will ensure "equitable investment in the safety needs of underserved
7 communities in preventing transportation-related fatalities and injuries." Pub. L. 117-58,
8 § 24112(c)(3), 135 Stat. 816.

9
10 31. The DOT Discrimination Condition is in apparent tension with a statutorily
11 required grant assurance sponsors must make to receive airport development grants from the FAA.
12 In particular, sponsors must assure that they will take necessary action to ensure, to the maximum
13 extent possible, that at least 10 percent of all businesses at the airport selling consumer products
14 or providing consumer services to the public are small business concerns owned and controlled by
15 "a socially and economically disadvantaged individual" or other small business concerns in
16 historically underutilized business zones. 49 U.S.C. § 47107(e)(1). "Socially and economically
17 disadvantaged individual" is defined to include "Black Americans, Hispanic Americans, Native
18 Americans, Asian Pacific Americans, and other minorities," as well as women. *Id.* § 47113(a)(2);
19 15 U.S.C. § 637(d).

20
21 32. Many of the general terms and conditions adopted by DOT and its OAs, including
22 but not limited to FTA, also require compliance with 2 C.F.R. § 200.321, which states, "[w]hen
23 possible, the recipient or subrecipient should ensure that small businesses, minority businesses,
24 women's business enterprises, veteran-owned businesses, and labor surplus area firms" are, *inter*
25 *alia*, "included on solicitation lists" and "solicited" when "deemed eligible." In addition, 49 C.F.R.
26
27

1 § 21.5, which prohibits discrimination, states, “[w]here prior discriminatory practice or usage
2 tends, on the grounds of race, color, or national origin to exclude individuals from participation in,
3 to deny them the benefits of, or to subject them to discrimination under any program or activity . .
4 . the applicant or recipient must take affirmative action to remove or overcome the effects of the
5 prior discriminatory practice or usage.” 49 C.F.R. § 21.5(b)(7).
6

7 33. In February 2024, DOT posted a NOFO, updated in April 2024, announcing a
8 competition for SS4A grant funding for Fiscal Year 2024 (the “FY 2024 SS4A NOFO”). The FY
9 2024 SS4A NOFO directed applicants to consider policy priorities in their applications, including
10 “Equity and Barriers to Opportunity” and “Climate Change and Environmental Justice.” The FY
11 2024 SS4A NOFO defined “equity,” which it strongly emphasized throughout, as “[t]he consistent
12 and systematic fair, just, and impartial treatment of all individuals, including individuals who
13 belong to underserved communities that have been denied such treatment, such as Black, Latino,
14 Indigenous and Native Americans, Asian Americans and Pacific Islanders, and other persons of
15 color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+)
16 persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely
17 affected by persistent poverty or inequality.”
18

19 34. This Court’s May 23 TRO enjoined DOT, the DOT OAs, and their officers and
20 agents from taking various actions to impose, enforce, or withhold DOT funds as to Plaintiffs
21 Columbus, Intercity Transit, King County, Minneapolis, NYC, Port of Seattle, and Tucson or their
22 subrecipients based on the DOT Grant Conditions or materially similar terms or conditions. The
23 May 23 TRO also ordered DOT and the DOT OAs to immediately treat any actions taken to
24 implement the DOT Grant Conditions against those Plaintiffs, including any delays or withholding
25 of funds based on the conditions, as void, and enjoined DOT and the DOT OAs from retroactively
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1 applying the conditions to grant agreements during the effective period of the TRO.

2 35. This Court's June 3, 2025 PI enjoined the DOT Defendants from taking any of the
3 actions enjoined in the TROs, as well as certain other actions to implement the DOT Grant
4 Conditions, with respect to the Initial DOT Defendants. However, the DOT Defendants have
5 continued to impose the DOT Grant Conditions on jurisdictions and local agencies that were not
6 subject to the PI order, including the New DOT Plaintiffs.
7

8 36. Plaintiffs Second Amended Complaint added the New DOT Plaintiffs to this
9 lawsuit. Plaintiffs then filed this Motion seeking, among other things, to extend the preliminary
10 relief granted in the first PI Order as to the DOT Grant Conditions to the New DOT Plaintiffs. The
11 Initial DOT Plaintiffs and New DOT Plaintiffs assert the same claims and allege materially similar
12 harms with respect to the DOT Grant Conditions.
13

14 37. For similar reasons to those stated in the first PI order, the New DOT Plaintiffs face
15 immediate and irreparable harms during the pendency of this litigation absent a preliminary
16 injunction. Any delay or loss of DOT funding would force the DOT Plaintiffs to substantially
17 curtail existing and planned transportation safety and other improvement operations, including but
18 not limited to enhancing pedestrian and cyclist safety, conducting airport renovations and bridge
19 improvements, and maintaining and replacing a range of transit vehicles. In some cases, the DOT
20 Plaintiffs need to draw down grant awards immediately or else divert resources from other projects
21 or services and face significant project delays. The loss of DOT funding would require the DOT
22 Plaintiffs to fundamentally rework their longstanding financial plans and procedures, capital
23 project delivery processes, and service delivery models in ways that could have significant impacts
24 on their missions, employees, and constituents. Given the significance of the impacts, the
25 uncertainty surrounding continued DOT funding is already causing the DOT Plaintiffs harm. To
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1 give just a few examples:

2 a. Loss of FHWA funding would require Bremerton to immediately cease
3 work on projects to design improvements to a key corridor to address safety concerns
4 and provide critical infrastructure upgrades to the region.

5 b. Similarly, Rohnert Park would be forced to indefinitely delay an underway
6 Highway 101 bicycle and pedestrian overcrossing project if FHWA withholds funds,
7 leaving the City's residents, particularly those in vulnerable and underserved
8 communities, exposed to hazardous road conditions.

9 c. Withholding FAA funding from Milwaukee County would force it to
10 cancel, delay, or modify—at significantly increased cost—projects to strengthen and
11 rehabilitate major runways and other key airport infrastructure, impairing the County's
12 ability to fund capital projects over the long-term.

13 d. Even a delay in Pacifica's receipt of DOT funding from grant awards passed
14 through the State of California would cause disruptions in projects related to public
15 safety and traffic control that rely on National Highway Traffic Safety Administration
16 funds.

17 e. Loss of FTA funding would place Santa Rosa at risk of falling out of
18 compliance with FTA regulations and California's zero-emission requirements and
19 would lead to staffing reductions, service curtailments, reduced maintenance
20 capabilities in its transit system, and delayed or cancelled infrastructure improvements
21 intended to serve the disabled and improve safety.
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C. The HHS Grant Conditions

38. The “HHS Plaintiffs”⁷ have received, currently receive, or are otherwise eligible to receive federal grants administered by Defendant U.S. Department of Health and Human Services (HHS). Collectively, HHS Plaintiffs rely on over \$2 billion in appropriated federal funds from HHS grant programs, which fund essential health programs and services, such as child welfare assistance, adoption and foster care services, and healthcare for low income individuals and those living with HIV/AIDS. These programs are administered by HHS and its operating divisions and agencies, including but not limited to the Administration for Children and Families (ACF), the Health Resources and Services Administration (HRSA), the Substance Abuse and Mental Health Services Administration (SAMHSA), the National Institutes of Health (NIH), and the Centers for Disease Control and Prevention (CDC), among others.

39. Like HUD and DOT, HHS has begun attaching new and similar conditions to grants administered by HHS and its operating divisions and agencies, as described below (collectively, the “HHS Grant Conditions”).

40. In April 2025, HHS updated its Grants Policy Statement, which applies to discretionary grants and is incorporated into awards and certain award modifications after April 16, 2025. The updated Grants Policy Statement provided:

[R]ecipients must comply with all applicable Federal anti-discrimination laws material to the government’s payment decisions for purposes of 31 U.S.C. § 372(b)(4).

(1) Definitions. As used in this clause –

(a) DEI means “diversity, equity, and inclusion.”

⁷ The “HHS Plaintiffs” are King County, Pierce County, Snohomish County, Boston, Columbus, NYC, San Francisco, Santa Clara, Cambridge, Chicago, Denver, Minneapolis, Wilsonville, Alameda County, Baltimore, Cambridge, Dane County, Eugene, Hennepin County, Milwaukee, Multnomah County, Oakland, Pacifica, Pima County, Ramsey County, Rochester, San Mateo County, and Wilsonville.

(b) DEIA means “diversity, equity, inclusion, and accessibility.”

(c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.

....

By accepting the grant award, recipients are certifying that . . . [t]hey do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws

(together, the “HHS Discrimination Condition”).

41. On July 24, 2025, after Plaintiffs filed the Motion, HHS updated the Grants Policy Statement again (2025 HHS GPS), removing express references to DEI but maintaining that by not only “accepting,” but even “*applying for* . . . federal funds from HHS, recipients certify compliance with all federal antidiscrimination laws and these requirements that complying with those laws is a material condition of receiving federal funding streams.” The 2025 HHS GPS also states that “[r]ecipients are responsible for ensuring subrecipients, contractors, and partners also comply.” The statements referenced above, including by Attorney General Bondi, Deputy Attorney General Blanche, and other federal officials, strongly suggest that HHS intends to enforce the 2025 HHS GPS consistent with the anti-DEI reinterpretation of nondiscrimination law expressed in these statements, notwithstanding the revised language.

42. In addition to these agency-wide conditions, several HHS operating divisions and agencies have issued their own general terms and conditions incorporating the 2025 HHS GPS.

43. ACF has updated its Standard Terms and Conditions, which apply to both discretionary and non-discretionary awards, to add a certification materially identical to the HHS Discrimination Condition, which states:

For new awards made on or after May 8, 2025, the following is effective immediately:

Recipients must comply with all applicable Federal anti-discrimination laws material to the government's payment decisions for purposes of [the FCA].

(1) Definitions. As used in this clause –

(a) DEI means “diversity, equity, and inclusion.”

(b) DEIA means “diversity, equity, inclusion, and accessibility.”

(c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.

(e) Federal anti-discrimination laws means Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

(i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote the following in violation of Federal anti-discrimination laws: DEI, DEIA, or discriminatory equity ideology.

44. While HHS grants have long required compliance with nondiscrimination laws, President Trump, HHS, and other agencies have confirmed their agenda is to prohibit policies or programs promoting inclusion for people of all races, ethnicities, national origins, sexes, gender identities, or sexual orientations through the guise of enforcing federal nondiscrimination law.

45. Like HHS, ACF updated its Standard Terms and Conditions on July 29, 2025, to remove express references to DEI. But the statements discussed indicated that this revision does not change the intended meaning of the condition or how ACF will enforce it:

By applying for or accepting federal funds from HHS, recipients certify compliance with all federal antidiscrimination laws and these requirements and that complying with those laws is a material condition of receiving federal funding streams. Recipients are responsible for ensuring subrecipients, contractors, and partners also comply.

46. On May 14, 2025, HRSA issued updated general terms and conditions applicable to “all active awards.” The revised HRSA terms and conditions incorporate the 2025 HHS GPS and also contain the following new provision:

By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients, whose programs, are covered by Title IX certify as follows:

Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.

The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.

Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.

Recipient acknowledges that this certification reflects a change in the government’s position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.

Recipient acknowledges that a knowing false statement relating to Recipient’s compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

1 (the “HRSA Gender Ideology Condition”).

2 47. SAMHSA has also updated its NOFO Application Guide to state that “[a]ll
3 activities proposed in your application and budget narrative must be in alignment with the current
4 Executive Orders” (the “SAMHSA EO Condition”).

5 48. On July 29, 2025, SAMHSA also updated its Fiscal Year 2025 Standard Terms and
6 Conditions (2025 SAMHSA T&Cs). The 2025 SAMHSA T&Cs incorporate the 2025 HHS GPS
7 and also contain a Title IX condition materially identical to the HRSA Gender Ideology Condition
8 (“SAMHSA Gender Ideology Condition”). Moreover, the 2025 SAMHSA T&Cs state
9 “[r]ecipients are required to comply with all applicable Executive Orders” (mirroring the
10 SAMHSA EO Condition).

11 49. Finally, NIH has issued Notices of Award that contain a condition relating to Title
12 IX that is substantially identical to the HRSA Gender Ideology Condition (the “NIH Gender
13 Ideology Condition”).

14 50. The HHS Grant Conditions contradict guidance contained in NOFOs issued by
15 HHS announcing competitions for HHS funds. For instance, in 2024, CDC issued a NOFO
16 announcing a competition for grants under the High-Impact HIV Prevention and Surveillance
17 Programs for Health Departments. The NOFO required applicants to include an element in their
18 applications “[a]ddressing [s]ocial and [s]tructural [f]actors.” The NOFO further stated that “[t]he
19 impact of racism, homophobia, transphobia, and stigma significantly exacerbates the health
20 disparities experienced among communities disproportionately affected by HIV.” Accordingly,
21 the NOFO explained, “[h]ealth equity is a desirable goal that entails special efforts to improve the
22 health of those who have experienced social or economic disadvantage.” With respect to
23 “[p]opulation(s) of [f]ocus,” the NOFO explained that “[a]pplicants must provide HIV services to
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1 populations within the jurisdiction that are disproportionately impacted by HIV,” and provided
2 “[e]xamples to consider,” including “transgender women, cisgender Black or African American
3 women, gay and bisexual men, American Indian or Alaska Native gay and bisexual men, people
4 who inject drugs (PWID), youth, pregnant and postpartum persons and their infants, and other
5 populations with disproportionately higher rates of HIV diagnosis including individuals involved
6 in the justice system and people experiencing housing insecurity.”
7

8 51. HHS Plaintiffs face immediate and irreparable harms from imposition of the HHS
9 Grant Conditions during the pendency of this litigation absent a PI. Loss of HHS funding would
10 force jurisdictions to curtail or terminate essential services, leading many of their most vulnerable
11 residents to lose access to food, medical care, child care, and housing, among other critical
12 services. The curtailment of services would have wide-reaching public health consequences,
13 including but not limited to diminished pandemic preparedness and communicable disease control.
14 For example:
15

16 a. Loss of HRSA funding would cause at least 75 low income individuals
17 living in King County with HIV to immediately lose housing, up to 500 others to be at
18 high risk of losing housing, and approximately 3,300 such individuals to lose access to
19 critical medical and support services that help them navigate the challenges of living
20 with HIV.
21

22 b. A loss of Social Service Block Grants administered by ACF would lead to
23 thousands of Dane County’s most vulnerable residents losing access to meals, medical
24 care, housing, and other essential social services.
25

26 c. San Francisco would be unable to replace tens of millions of dollars in Title
27 IV-E foster care and adoption assistance funds administered by ACF, forcing it to end

1 payments to foster families and agencies that provide housing, care, and services to
2 approximately 500 children who cannot remain safely in their homes.

3 d. Losing CDC funding would force Minneapolis to curtail emergency
4 preparedness work, including losing three of five staff members who work on the
5 program and severely impacting the City's capacity to prepare and respond to public
6 health emergencies like the COVID-19 pandemic.

7
8 e. Similarly, reductions in CDC funding for HIV and sexually-transmitted
9 infection (STI) prevention and surveillance would lead to lay-offs and elimination of
10 programs, setting-back San Francisco's progress in addressing those public health
11 challenges. The resulting reduction in services would likely lead to increases in HIV
12 and syphilis infections as well as HIV and STI deaths.

13
14 f. Loss of TANF block grants would significantly impact services available to
15 vulnerable populations in NYC, including vocational training for the unemployed and
16 underemployed; counseling, legal assistance, case management for survivors of
17 domestic violence, and rental and legal assistance for those facing eviction.

18 II. CONCLUSIONS OF LAW

19 1. The Court has jurisdiction over Defendants and the subject matter of this action.
20 Plaintiffs' claims are not subject to the Tucker Act because the sources of their asserted rights are
21 the U.S. Constitution and statutes, including the Separation of Powers doctrine, the Spending
22 Clause, the Fifth Amendment's vagueness doctrine, the Tenth Amendment, and the Administrative
23 Procedure Act (APA). Moreover, the type of relief Plaintiffs seek is declaratory and injunctive,
24 precisely the kind of relief that is generally not available in the Court of Federal Claims. *See Doe*
25 *v. Tenet*, 329 F.3d 1135, 1141 (9th Cir. 2003).
26
27

1 2. Plaintiffs have standing to bring this suit. “A loss of funds promised under federal
2 law satisfies Article III’s standing requirement.” *City & Cnty. of S.F. v. Trump* (“*San Francisco*”),
3 897 F.3d 1225, 1235 (9th Cir. 2018); *see also Dep’t of Commerce v. New York*, 588 U.S. 752, 767
4 (2019). Here, Plaintiffs have been awarded, conditionally awarded, reasonably expect to be
5 awarded, or otherwise rely on federal grant funds that they could lose unless they accept unlawful
6 conditions that would dictate how they govern on matters of public concern. This imminent loss
7 of funds or infringement of rights is traceable to the conditions at issue and redressable by an order
8 barring their enforcement. *See Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013).

9
10 3. To obtain a preliminary injunction, the Plaintiffs must establish (1) they are likely
11 to succeed on the merits; (2) irreparable harm is likely in the absence of preliminary relief; (3) the
12 balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat.*
13 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1).

14
15 4. There is a strong likelihood that the New CoC Plaintiffs will succeed on the merits
16 of their claims that the CoC Grant Conditions violate (1) the Constitution’s separation of powers
17 doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *S. Dakota v. Dole*, 483 U.S.
18 203, 207–08 (1987); (3) the Fifth Amendment’s vagueness doctrine; and (4) the APA, 5 U.S.C. §
19 706(2).

20
21 5. There is a strong likelihood that the HUD Plaintiffs will succeed on the merits of
22 their claims that the Non-CoC HUD Grant Conditions violate (1) the Constitution’s separation of
23 powers doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *Dole*, 483 U.S. at
24 207–08 (1987); (3) the Fifth Amendment’s vagueness doctrine; and (4) the APA, 5 U.S.C. §
25 706(2).

26 6. There is a strong likelihood that the DOT Plaintiffs will succeed on the merits of
27

1 their claims that the DOT Grant Conditions violate (1) the Constitution’s separation of powers
 2 doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *Dole*, 483 U.S. at 207–08; (3)
 3 the Fifth Amendment’s vagueness doctrine; (4) the Tenth Amendment, *Nat’l Fed’n of Indep. Bus.*
 4 *v. Sebelius* (“*NFIB*”), 567 U.S. 519, 577–78 (2012); and (5) the APA, 5 U.S.C. § 706(2).
 5

6 7. There is a strong likelihood that the HHS Plaintiffs will succeed on the merits of
 7 their claims that the HHS Grant Conditions violate (1) the Constitution’s separation of powers
 8 doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *Dole*, 483 U.S. at 207–08; (3)
 9 the Fifth Amendment’s vagueness doctrine; and (4) the APA, 5 U.S.C. § 706(2).
 10

11 8. Plaintiffs have also shown that they are likely to suffer irreparable harm during the
 12 pendency of litigation in the absence of a preliminary injunction.

13 9. The balance of equities tips toward Plaintiffs and the public interest strongly weighs
 14 in favor of entering a preliminary injunction. Defendants have not posited any non-monetary harm
 15 they will experience if an injunction were to issue, and they have no legitimate interest in ensuring
 16 that funds are spent pursuant to conditions that were likely imposed in violation of the APA and
 17 the Constitution. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (there is
 18 no legitimate government interest in violating federal law).
 19

20 10. The Court deems no security bond is required under Rule 65(c).
 21

22 **III. ORDER**

23 It is now, therefore, ORDERED as follows:

24 1. Plaintiffs’ Third Motion for Preliminary Injunction is GRANTED;

25 2. HUD and its officers, agents, servants, employees, and attorneys, and any other
 26 persons who are in active concert or participation with them (collectively “Enjoined HUD CoC
 27 Parties”), are enjoined from (1) imposing or enforcing the CoC Grant Conditions, as defined in the

1 Appendix to this Order, or any materially similar terms or conditions at any stage of the grant-
2 making process, including but not limited to in new grant applications, notices of funding
3 availability or opportunity, certifications, grant agreements, or post-award submissions, with
4 respect to any CoC funds awarded to the New CoC Plaintiffs or members of their Continuums; (2)
5 as to the New CoC Plaintiffs or members of their Continuums, rescinding, withholding, cancelling,
6 or otherwise not processing any CoC Agreements, or pausing, freezing, impeding, blocking,
7 cancelling, terminating, delaying, withholding, or conditioning CoC funds, based on such terms or
8 conditions, including without limitation failing or refusing to process and otherwise implement
9 grants signed with changes or other objections to conditions enjoined by this preliminary
10 injunction; (3) requiring the New CoC Plaintiffs or members of their Continuums to make any
11 “certification” or other representation related to compliance with such terms or conditions; or (4)
12 refusing to issue, process, or sign CoC Agreements based on New CoC Plaintiffs’ participation in
13 this lawsuit;
14
15

16 3. The Enjoined HUD CoC Parties shall immediately treat any actions taken to
17 implement or enforce the CoC Grant Conditions or any materially similar terms or conditions as
18 to the New-CoC Plaintiffs or their Continuums, including but not limited to any delays or
19 withholding of funds based on such conditions, as null, void, and rescinded; while this PI is in
20 effect, shall treat as null and void any such conditions included in any grant agreement executed
21 by any New CoC Plaintiff or member of a New CoC Plaintiff’s Continuum; and may not
22 retroactively apply such conditions to grant agreements during the effective period of this PI. The
23 Enjoined HUD CoC Parties shall immediately take every step necessary to effectuate this order,
24 including without limitation clearing any administrative, operational, or technical hurdles to
25 implementation;
26
27

1 4. HUD, all of the HUD program offices, and their officers, agents, servants,
2 employees, and attorneys, and any other persons who are in active concert or participation with
3 them (collectively “Enjoined HUD Parties”), are enjoined from (1) imposing or enforcing the Non-
4 CoC HUD Grant Conditions, as defined in the Appendix to this Order, or any materially similar
5 terms or conditions at any stage of the grant-making process, including but not limited to in new
6 grant applications, notices of funding availability or opportunity, certifications, grant agreements,
7 or post-award submissions, with respect to any non-CoC HUD funds awarded to the HUD
8 Plaintiffs, their consortia, or their subrecipients; (2) as to the HUD Plaintiffs, their consortia, or
9 their subrecipients, rescinding, withholding, cancelling, or otherwise not processing any non-CoC
10 HUD awards, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying,
11 withholding, or conditioning non-CoC HUD funds, based on such terms or conditions, including
12 without limitation failing or refusing to process and otherwise implement grants signed with
13 changes or other objections to conditions enjoined by this preliminary injunction; (3) requiring the
14 HUD Plaintiffs, their consortia, or their subrecipients to make any “certification” or other
15 representation related to compliance with such terms or conditions; or (4) refusing to issue,
16 process, or sign grant agreements based on HUD Plaintiffs’ participation in this lawsuit;

19 5. The Enjoined HUD Parties shall immediately treat any actions taken to implement
20 or enforce the Non-CoC HUD Grant Conditions or any materially similar terms or conditions as
21 to the HUD Plaintiffs, their consortia, or their subrecipients, including but not limited to any
22 delays or withholding of funds based on such conditions, as null, void, and rescinded; while this
23 PI is in effect, shall treat as null and void any such conditions included in any grant agreement
24 executed by any HUD Plaintiff, a member of its consortium, or its subrecipient; and may not
25 retroactively apply such conditions to grant agreements during the effective period of this PI.
26
27

1 The Enjoined HUD Parties shall immediately take every step necessary to effectuate this order,
2 including without limitation clearing any administrative, operational, or technical hurdles to
3 implementation;

4 6. DOT, all of the DOT OAs, and their officers, agents, servants, employees, and
5 attorneys, and any other persons who are in active concert or participation with them (collectively
6 “Enjoined DOT Parties”), are enjoined from (1) imposing or enforcing the DOT Grant Conditions,
7 as defined in the Appendix to this Order, or any materially similar terms or conditions at any stage
8 of the grant-making process, including but not limited to in new grant applications, notices of
9 funding availability or opportunity, certifications, grant agreements, or post-award submissions,
10 as to any DOT funds awarded, directly or indirectly, to the New DOT Plaintiffs or their
11 subrecipients; (2) as to the New DOT Plaintiffs or their subrecipients, rescinding, withholding,
12 cancelling, or otherwise not processing the DOT grant awards, or pausing, freezing, impeding,
13 blocking, canceling, terminating, delaying, withholding, or conditioning DOT funds, based on
14 such terms or conditions, including without limitation failing or refusing to process and otherwise
15 implement grants signed with changes or other objections to conditions enjoined by this
16 preliminary injunction; (3) requiring the New DOT Plaintiffs or their subrecipients to make any
17 “certification” or other representation related to compliance with such terms or conditions; or (4)
18 refusing to issue, process, or sign grant agreements based on New DOT Plaintiffs’ participation in
19 this lawsuit;
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21
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23 7. The Enjoined DOT Parties shall immediately treat any actions taken to implement
24 or enforce the DOT Grant Conditions or any materially similar terms or conditions as to DOT
25 funds awarded, directly or indirectly, to the New DOT Plaintiffs or their subrecipients, including
26 but not limited to any delays or withholding of funds based on such conditions, as null, void, and
27

1 rescinded; while this PI is in effect, shall treat as null and void any such conditions included in any
2 grant agreement executed by any New DOT Plaintiff or its subrecipient; and may not retroactively
3 apply such conditions to grant agreements during the effective period of this PI. The Enjoined
4 DOT Parties shall immediately take every step necessary to effectuate this order, including without
5 limitation clearing any administrative, operational, or technical hurdles to implementation;
6

7 8. HHS, all of the HHS operating divisions and agencies, and their officers, agents,
8 servants, employees, and attorneys, and any other persons who are in active concert or
9 participation with them (collectively “Enjoined HHS Parties”), are enjoined from (1) imposing or
10 enforcing the HHS Grant Conditions, as defined in the Appendix to this Order, or any materially
11 similar terms or conditions at any stage of the grant-making process, including but not limited to
12 in new grant applications, notices of funding availability or opportunity, certifications, grant
13 agreements, or post-award submissions, as to any HHS funds awarded, directly or indirectly, to
14 the HHS Plaintiffs or their subrecipients; (2) as to the HHS Plaintiffs or their subrecipients,
15 rescinding, withholding, cancelling, or otherwise not processing HHS grant awards, or pausing,
16 freezing, impeding, blocking, canceling, terminating, delaying, withholding, or conditioning
17 HHS funds, based on such terms or conditions, including without limitation failing or refusing to
18 process and otherwise implement grants signed with changes or other objections to conditions
19 enjoined by this preliminary injunction; (3) requiring the HHS Plaintiffs or their subrecipients to
20 make any “certification” or other representation related to compliance with such terms or
21 conditions; or (4) refusing to issue, process, or sign grant agreements based on HHS Plaintiffs’
22 participation in this lawsuit;
23

24 9. The Enjoined HHS Parties shall immediately treat any actions taken to implement
25 or enforce the HHS Grant Conditions or any materially similar terms or conditions as to HHS
26
27

1 funds awarded, directly or indirectly, to the HHS Plaintiffs or their subrecipients, including but
2 not limited to any delays or withholding of funds based on such conditions, as null, void, and
3 rescinded; while this PI is in effect, shall treat as null and void any such conditions included in
4 any grant agreement executed by any HHS Plaintiff or its subrecipient; and may not retroactively
5 apply such conditions to grant agreements during the effective period of this PI. The Enjoined
6 HHS Parties shall immediately take every step necessary to effectuate this order, including
7 without limitation clearing any administrative, operational, or technical hurdles to
8 implementation;
9

10 10. Defendants' counsel shall provide written notice of this Order to all Defendants and
11 their employees by the end of the second day after issuance of this Order;

12 11. By the end of the second day after issuance of this Order, the Defendants SHALL
13 FILE on the Court's electronic docket and serve upon Plaintiffs a Status Report documenting the
14 actions that they have taken to comply with this Order, including a copy of the notice and an
15 explanation as to whom the notice was sent;
16

17 12. This order remains in effect pending further orders from this Court.
18

19 Dated this ____ day of _____, 2025.
20

21 _____
22 HONORABLE BARBARA J. ROTHSTEIN
23
24
25
26
27

APPENDIX

The “CoC Grant Conditions” enjoined by this Order are the following terms and conditions:

- The recipient or applicant shall not use grant funds to promote “gender ideology,” as defined in E.O. 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- The recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any Grant Funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment;
- The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (PRWORA) and any applicable requirements that HUD, the Attorney General, or the U.S. Center for Immigration Services [sic] may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;
- No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;
- Subject to the exceptions provided by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States;

- The recipient or applicant agrees that use of Grant Funds and its operation of projects assisted with Grant Funds are governed by all Executive Orders.

The “**Non-CoC HUD Grant Conditions**” enjoined by this Order are the following terms and conditions:

- The recipient or applicant will not use Federal funding to promote diversity, equity, and inclusion (DEI) mandates, policies, programs, or activities that violate any applicable Federal antidiscrimination laws;
- The recipient or applicant shall not use grant funds to promote “gender ideology,” as defined in Executive Order (E.O.) 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- The recipient or applicant agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal antidiscrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any grant funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment;
- The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (PRWORA) and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;
- If applicable, no state or unit of general local government that receives or applies for funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;

- Unless excepted by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.
- The recipient or applicant must comply with applicable existing and future Executive Orders, as advised by the Department, including but not limited to Executive Order 14182, Enforcing the Hyde Amendment; Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity; Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government; and Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing.

The “**DOT Grant Conditions**” enjoined by this Order are the following terms and conditions:

- Pursuant to section (3)(b)(iv)(A), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, the recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- Pursuant to section (3)(b)(iv)(B), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, by entering into this Agreement, the recipient or applicant certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws;
- The recipient or applicant agrees to comply with executive orders, including but not limited to Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, as they relate to the application, acceptance, and use of Federal funds for this project or grant;
- The recipient or applicant will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law;

- 1 – The recipient or applicant will follow applicable federal laws
2 pertaining to Subchapter 12, and be subject to the penalties set forth
3 in 8 U.S.C. § 1324, Bringing in and harboring certain aliens, and 8
4 U.S.C. § 1327, Aiding or assisting certain aliens to enter.
- 5 – The recipient or applicant must comply with other applicable federal
6 nondiscrimination laws, regulations, and requirements, and follow
7 federal guidance prohibiting discrimination;
- 8 – The recipient or applicant must comply with all applicable executive
9 orders as they relate to the application, acceptance, and use of
10 Federal funds for this Project;
- 11 – Performance under this agreement or application shall be governed
12 by and in compliance with the following requirements, as
13 applicable, to the type of organization of the recipient or applicant
14 and any applicable sub-recipients. The applicable provisions to this
15 agreement or application include, but are not limited to, the
16 following: Bringing in and harboring certain aliens – 8 U.S.C. 1324;
17 Aiding or assisting certain aliens to enter – 8 U.S.C. 1327; Executive
18 Order 14151, Ending Radical and Wasteful Government DEI
19 Programs and Preferencing; Executive Order 14168 Defending
20 Women from Gender Ideology Extremism and Restoring Biological
21 Truth to the Federal Government; and Executive Order 14173,
22 Ending Illegal Discrimination and Restoring Merit-Based
23 Opportunity.

24 The “**HHS Grant Conditions**” enjoined by this Order are the following terms and
25 conditions:

- 26 – The recipient or applicant must comply with all applicable Federal
27 anti-discrimination laws material to the government’s payment
28 decisions for purposes of 31 U.S.C. § 372(b)(4).

29 (1) Definitions. As used in this clause –

30 (a) DEI means “diversity, equity, and inclusion.”

31 (b) DEIA means “diversity, equity, inclusion, and accessibility.”

32 (c) Discriminatory equity ideology has the meaning set forth in
33 Section 2(b) of Executive Order 14190 of January 29, 2025.

34

(e) Federal anti-discrimination laws means Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

- (i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws;
- By applying for or accepting federal funds from HHS, recipients certify compliance with all federal antidiscrimination laws and these requirements and that complying with those laws is a material condition of receiving federal funding streams. Recipients are responsible for ensuring subrecipients, contractors, and partners also comply.
- All activities proposed in your application and budget narrative must be in alignment with the current Executive Orders;
- Recipients are required to comply with all applicable Executive Orders;
- Funds cannot be used to support or provide services, either directly or indirectly, to removable or illegal aliens;
- By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients or applicants, whose programs, are covered by Title IX certify as follows:

The recipient or applicant is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.

The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.

Payments under the Agreement are predicated on compliance with the above requirements, and therefore the recipient or

1 applicant is not eligible for funding under the Agreement or to
2 retain any funding under the Agreement absent compliance with
the above requirements.

3 The recipient or applicant acknowledges that this certification
4 reflects a change in the government's position regarding the
5 materiality of the foregoing requirements and therefore any prior
6 payment of similar claims does not reflect the materiality of the
foregoing requirements to this Agreement.

7 The recipient or applicant acknowledges that a knowing false
8 statement relating to recipient's or applicant's compliance with
9 the above requirements and/or eligibility for the Agreement may
10 subject the recipient or applicant to liability under the False
11 Claims Act, 31 U.S.C. § 3729, and/or criminal liability,
12 including under 18 U.S.C. §§ 287 and 1001.
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1 Presented by:

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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 43

No. 2:25-cv-00814-BJR

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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 44
No. 2:25-cv-00814-BJR

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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 45
No. 2:25-cv-00814-BJR

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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 46
No. 2:25-cv-00814-BJR

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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 47
No. 2:25-cv-00814-BJR

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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 48
No. 2:25-cv-00814-BJR

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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 49
No. 2:25-cv-00814-BJR

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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION - 50
No. 2:25-cv-00814-BJR

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30 ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
31 PRELIMINARY INJUNCTION - 51
32 No. 2:25-cv-00814-BJR

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